



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Power Sale Agreement with Shelter Cove Resort Improvement District No. 1

MEETING DATE: July 17, 1996

SUBMITTED BY: Electric Utility Director

RECOMMENDED ACTION: That the City Council approve the attached resolution authorizing the Electric Utility Director to approve the attached Service Shedule No. One to Member Resource Marketing Project Agreement relating to the Identified Power Sale to Shelter Cove Resort Improvement District No. 1 (Agreement).

BACKGROUND: NCPA and the District have jointly developed the Agreement for NCPA to provide power to the District. The efforts were conducted under the NCPA Member Resource Marketing Agreement. The City is automatically entitled to a minimum 22.67% share of all NCPA Member Resource Marketing Agreement identified power sales in which the City desires to participate. The City has access to sufficient power resources to support this Agreement.

The Contract term will be from the document signing date by all parties until June 30, 1999.

The City's ratepayers will receive a benefit in the form of a net offset to the City's bulk power purchase costs.

FUNDING: Not Applicable

A handwritten signature in black ink, appearing to read "Alan N. Vallow".

Alan N. Vallow
Electric Utility Director

Prepared by Jack Stone, Manager, Rates & Resources

ANV/JLS/pn

cc: City Attorney

APPROVED

A handwritten signature in black ink, appearing to read "H. Dixon Flynn".
H. Dixon Flynn
CITY MANAGER

SERVICE SCHEDULE No. ONE
to
MEMBER RESOURCE MARKETING PROJECT AGREEMENT
relating to the
IDENTIFIED POWER SALE
to
SHELTER COVE RESORT IMPROVEMENT DISTRICT, No. 1

This Service Schedule dated _____, 1996, is an agreement by and among the Northern California Power Agency, a joint powers agency of the State of California (NCPA) and the members of NCPA having executed this Service Schedule (Participant or Participants), and is entered into on the basis of the following.

Recitals:

- A. NCPA's resource plan shows that it would be economical for NCPA and its participating members to sell Wholesale Electric Power Requirements Service to the Shelter Cove Resort Improvement District, No. 1 (District).
- B. NCPA has therefore entered into the Power Sale Agreement between the District and NCPA, dated _____, 1996 under which it will sell Wholesale Electric Power Requirements Service to the District conditioned upon necessary interconnection arrangements between the District and Pacific Gas and Electric Company (PG&E) and the necessary firm transmission service being provided by PG&E to NCPA in accordance with the NCPA-PG&E Interconnection Agreement.
- C. District is a resort improvement district formed under the provisions of Sections 13000 et. seq., of the Public Resources Code of the State of California, acting by and through its Board of Directors to provide among other services retail electric service to its customers.
- D. NCPA and the Participants wish to enter into this Service Schedule to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the Power Sale Agreement.

NOW THEREFORE, NCPA and the Participants hereby enter into this Service Schedule.

- 1 Definitions. The following terms shall, when used in this Service Schedule, have the following meanings:

- 1.1 “Control Area Services” means those services provided by NCPA or Third Parties that are necessary to support the transmission of energy from resources to District Load while maintaining reliable operation of the transmission provider’s transmission system in accordance with Prudent Utility Practice. Those services include, but are not limited to, compensation for losses, load following, AGC regulation, reserves, compensation for energy imbalances, congestion management, reactive power, voltage control, scheduling and dispatching, as approved by the FERC. For purposes of this Service Schedule these services do not include the provision of reactive power which will be supplied by PG&E.
 - 1.2 “District Load” means the total electric capacity and energy requirements of all District’s native retail electric customers (expressed in kW and kWh) during a month.
 - 1.3 “Participant” means an NCPA member which has executed this Service Schedule and a Participant's successor in interest.
 - 1.4 “Participation Percentage” means, with respect to each Participant, the percentage of the Project for which such Participant is obligated pursuant to the terms of this Service Schedule. The Participation Percentage for each Participant shall be the percentage set forth opposite the name of such Participant in Appendix A hereto, as such Appendix A may be amended from time to time in accordance with this Service Schedule.
 - 1.5 “Project” means the sale of Wholesale Electric Power Requirements Service pursuant to the Power Sale Agreement and any amendments thereto.
 - 1.6 “Power Sale Agreement” means the agreement between NCPA and the District referred to in the second recital hereinabove.
 - 1.7 “Wholesale Electric Power Requirements Service” means the provision of firm capacity, associated energy, firm transmission and Control Area Services necessary to serve District Load.
- 2 Purpose. The purpose of this Service Schedule is (i) to provide for the making available of Wholesale Electric Power Requirements Service by Participants that is to be delivered by NCPA to District under the Power Sale Agreement, (ii) to authorize NCPA as agent for the Participants to engage in activities related to that basic purpose and (iii) to specify the rights and obligations of NCPA and of the Participants with respect to the Project.

- 3 Wholesale Electric Power Requirements Service. Each Participant will make available to NCPA Wholesale Electric Power Requirements Service to enable NCPA, after transmission losses, to provide District, at the Point of Delivery specified in the Power Sale Agreement, with Wholesale Electric Power Requirements Service in amounts equal to the product of the Participation Percentage of that Participant and the total Wholesale Electric Power Requirements Service to be provided by NCPA to District under the Power Sale Agreement. To the extent any Participant fails to make available Wholesale Electric Power Requirements Service to NCPA for purposes of fulfilling NCPA's obligation to District under the Power Sale Agreement, NCPA shall procure the necessary Wholesale Electric Power Requirements Service and bill such Participant to recover all costs attributable to such procurement.
- 4 Related NCPA Activities. NCPA may engage in other activities intended to enable the Participants to make available the Wholesale Electric Power Requirements Service provided by NCPA to District as efficiently and economically as possible. NCPA shall exercise the authority granted to it by this section in accordance with the provisions of section 11 of this Service Schedule.
- 5 NCPA Project Revenues. NCPA shall dispense to each Participant in accordance with section 7 an amount equal to total Project revenues net of Project expenses times each Participant's corresponding Participation Percentage.
- 6 NCPA Project Expenses. The Participants recognize that NCPA will incur certain expenses, including but not limited to charges for transmission services, as the result of administering this Service Schedule and the Power Sale Agreement, and carrying out any related activities in which it may be directed to engage pursuant to Section 4 of this Service Schedule. The Participants agree that NCPA may budget and bill for such expenses pursuant to Section 6 of this Service Schedule.
- 7 Budget and Monthly Statements.
- 7.1 Prior to the beginning of each NCPA fiscal year for which no budget has been adopted, the NCPA Commission will adopt a budget for such fiscal year or years for revenues, costs and expenses relating to the Project. The NCPA Commission may adopt budgets for more than one fiscal year. The budget shall include the following categories of revenues, costs and expenses: (a) the revenues that NCPA estimates that it will receive from the District for providing Wholesale Electric Power Requirements Service to District, (b) the charges that NCPA estimates that it will incur to provide Wholesale Electric Power Requirements Service to District, and (c) all other costs and expenses reasonably related to the Project. NCPA

shall promptly give notice to each Participant of its projected share of such categories of revenues, costs and expenses.

- 7.2 Monthly statements prepared by NCPA shall be sent to each Participant showing the Participant's share of revenues, costs and expenses payable pursuant to this Service Schedule for each billing period. Such statements shall separately set forth any credit or debit adjustments.
- 7.3 Revenues from the Project payable by NCPA to Participants pursuant to section 5 shall be dispensed monthly to Participants in an amount as recorded in the accompanying monthly statement.
- 7.4 Amounts owed by Participants as shown on each monthly statement are due and payable thirty (30) days after the date of the monthly statement except that any amount due on a Friday, holiday or weekend may be paid on the closest following workday.
- 7.5 Any amounts due and not paid by a Participant or NCPA shall bear interest from the due date until paid at the annual rate established by the Commission of NCPA at the time of adoption of the then most recent budget. If a Participant questions or disputes the correctness of any monthly statement by NCPA, it shall pay NCPA, in cases where an amount is owed, the amount claimed when due and shall within thirty (30) days of the receipt of such monthly statement request an explanation from NCPA. If the monthly statement is determined to be incorrect, NCPA will issue a corrected monthly statement and refund any amount which may be due the Participant which refund shall bear interest from the date NCPA made or received original payment, as the case may be, until the date of the refund at an annual rate to be established by the Commission of NCPA at the time of adoption of the then most recent annual budget. If NCPA and the Participant fail to agree on the correctness of a monthly statement within thirty (30) days after the Participant has requested an explanation, the parties shall promptly submit the dispute to arbitration under section 1280 *et seq.* of the California Code of Civil Procedure.

8 Obligations in the Event of Default.

- 8.1 Upon failure of any Participant to make any payment in full when due under this Service Schedule, NCPA shall make written demand upon such Participant, and if payment is not made within 30 days from the date of such demand, the failure to make payment shall constitute a default.

- 8.2 Upon the default of any Participant, NCPA (a) may terminate the provisions of this Service Schedule insofar as the Agreement entitles the defaulting Participant to its Participation Percentage of Project benefits , and (b) shall use its best efforts to sell and transfer for the Participant's account all or a portion of the Participant's Participation Percentage of the Project. When making such sales and transfers, NCPA shall allow all Participants and then other NCPA member entities the same rights of first refusal that are provided for in section 9 of this Service Schedule. Notwithstanding such sale, transfer or termination, the obligations of the defaulting Participant under this Service Schedule shall continue in full force and effect except that such obligations shall be discharged to the extent that NCPA receives payment from a purchaser or transferee of the defaulting Participant's Participation Percentage in the Project.
- 8.3 Upon the default of any Participant, and except as transfers are made pursuant to section 9, (i) the Participation Percentage of each nondefaulting Participant shall be automatically increased for the remaining term of this Service Schedule pro rata with those of the other nondefaulting Participants, and (ii) the defaulting Participant's Participation Percentage in the benefits of the Project shall (but only for purposes of computing the respective Participation Percentages of the nondefaulting Participants) be reduced correspondingly. The fact that other Participants have increased their obligations to NCPA according to this section shall not relieve the defaulting Participant of its liability under this Service Schedule, and any Participant increasing its obligation shall have a right of recovery from the defaulting Participant to the extent of its increase in obligation.

9 Transfers of Rights by Participants.

- 9.1 A Participant has the right to make transfers, sales, and assignments (collectively "transfer(s)") of the Project and rights thereto. If a Participant desires to transfer a portion or its entire share of the Project for a specific time interval, or permanently, NCPA will, if requested by such Participant, use its best efforts to transfer that portion of the Participant's share of the Project.
- 9.2 Before NCPA may transfer a Project share pursuant to section 9.1 to any person or entity other than a Participant, it shall give all Participants the right to purchase the share on the same terms and conditions. Before NCPA may transfer a Project share pursuant to section 9.1 to any person or entity other than an NCPA member, it shall give all NCPA members the

right to purchase the share on the same terms and conditions. Such right shall be exercised within thirty (30) days of receipt of notice of said right.

- 9.3 No transfer shall relieve a Participant of any of its obligations under this Service Schedule except to the extent that NCPA receives payment of these obligations from a transferee.
- 10 Withdrawal by Participants. No Participant may withdraw from this Service Schedule. However, NCPA will use its best efforts to assist any Participant that wishes to transfer all or any portion of its rights pursuant to section 9 above.
- 11 NCPA Commission Governance of the Project.
- 11.1 Commission Meetings. Actions of the NCPA Commission relating to this Service Schedule or to the Project shall be taken in accordance with section 11.1 of the Member Resource Marketing Project Agreement.
- 11.2 Quorum. A quorum at NCPA Commission meetings for purposes of acting upon matters relating to this Service Schedule or to the Project shall be established in accordance with section 11.2 of the Member Resource Marketing Project Agreement.
- 11.3 Voting. Voting by representatives of Participants on matters relating to this Service Schedule or to the Project shall be in accordance with section 12.2 of the Member Resource Marketing Project Agreement.
- 12 Term and Termination. This Agreement shall not take effect until it has been executed and delivered to NCPA by Participants, whose Participation Percentages, in the aggregate relative to all Participants' entitlements, shall equal at least 65 percent. The NCPA members listed on Appendix A shall have 45 days following written notice of the effective date to execute and deliver counterparts of this Service Schedule to NCPA. If any NCPA member listed on Appendix A fails to execute and deliver this Service Schedule within such 45 days, unless otherwise provided by the Participants, the Participating Percentages of such member or members shall be spread among the Participants in proportion to their Participation Percentages. The term of this Service Schedule shall continue until the expiration of the Power Sale Agreement. This Agreement shall not be subject to termination prior to the expiration of its term by any party under any circumstances, whether based upon the default of any other party under this Service Schedule or otherwise, except as specifically provided herein.
- 13 Member Resource Marketing Agreement. This Service Schedule shall be deemed incorporated into the Member Resource Marketing Agreement that each

Participant has executed or successor agreement to the Member Resource Marketing Agreement. This Service Schedule shall be construed as constituting the more specific terms governing the general relationship between the parties set out in that Member Resource Marketing Agreement.

- 14 Several Obligation. No Participant shall be liable under this Service Schedule for the obligations of any other Participant, except as provided in section 8 of this Service Schedule. Each Participant shall be solely responsible and liable for performance of its obligations under this Service Schedule and for the maintenance and operation of its respective properties. The obligation of each Participant to make payments under this Service Schedule is a several obligation and not a joint obligation with those of the other Participants, except as provided in section 8 of this Service Schedule.
- 15 Amendments. This Service Schedule may be amended only by a written instrument executed by NCPA and the Participants or their successors with the same formality as this Service Schedule.
- 16 Severability. In the event that any of the terms, covenants or conditions of this Service Schedule shall be held invalid, NCPA and the Participants intend that all other terms, covenants and conditions and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that such provisions are not severable from all other provisions of this Service Schedule.
- 17 Governing Law. This Service Schedule shall be interpreted, governed by and construed under the laws of the State of California.
- 18 Counterparts. This Service Schedule may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.
- 19 Headings. The headings to the sections in this Service Schedule are intended for convenience only and not for the purpose of interpreting the provisions of this Service Schedule.
- 20 Notices. Any notice, demand or request required or authorized by this Service Schedule to be given to any Participant or to NCPA shall be given in writing and shall either be personally delivered to the Participant or transmitted to the Participant by regular mail at the address designated by the Participant. The designation of such address may be changed at any time by written notice.

- 21 No Waivers. No waiver of performance under this Service Schedule shall be effective unless given by the Commission. Any such waiver by the Commission in any particular instance shall not be deemed a waiver with respect to any subsequent performance.
- 22 Warranty of Authority. Each Participant which has executed and delivered this Service Schedule represents and warrants that it has agreed to be bound by all of the terms, covenants and conditions of this Service Schedule and has acted with all of the requisite capacity and authority and the approval of its governing body.

In witness whereof, each Participant has, by the signature of its duly authorized representatives shown below, executed and delivered a counterpart of this Service Schedule.

NORTHERN CALIFORNIA
POWER AGENCY

CITY OF ALAMEDA

By: _____

Attest: _____

Date: _____

By: _____

Date: _____

CITY OF BIGGS

CITY OF GRIDLEY

Attest: _____

Attest: _____

By: _____

By: _____

Date: _____

Date: _____

APPENDIX A
NCPA/DISTRICT CAPACITY AND ENERGY POWER SALE
THIRD PHASE AGREEMENT

PARTICIPATION PERCENTAGES AND MEGAWATTS

<u>MEMBER</u>	<u>PERCENT</u>
Alameda	21.486
Biggs	0.572
Gridley	1.878
Healdsburg	3.509
Lodi	22.670
Lompoc	5.668
Plumas-Sierra	4.480
Roseville	33.712
Ukiah	6.025
TOTAL	100.000

CITY OF HEALDSBURG

Attest: _____

By: _____

Date: _____

CITY OF LODI

Attest: _____

By: _____

Date: _____

CITY OF LOMPOC

Attest: _____

By: _____

Date: _____

PLUMAS-SIERRA RURAL
ELECTRIC COOPERATIVE

Attest: _____

By: _____

Date: _____

CITY OF ROSEVILLE

Attest: _____

By: _____

Date: _____

CITY OF UKIAH

Attest: _____

By: _____

Date: _____

APPROVED AS TO FORM:

Randall A. Hays
Randall A. Hays
City Attorney, City of Lodi

APPENDIX A

**SERVICE SCHEDULE No. ONE
SHELTER COVE POWER SALE AGREEMENT**

<u>PARTICIPANT</u>	<u>PARTICIPATION PERCENTAGES</u>
Alameda	21.486
Biggs	0.572
Gridley	1.878
Healdsburg	3.509
Lodi	22.670
Lompoc	5.668
Plumas-Sierra	4.480
Roseville	33.712
Ukiah	6.025
TOTAL	100.000

RESOLUTION NO. 96-100

A RESOLUTION OF THE LODI CITY COUNCIL
APPROVING THE POWER SALE AGREEMENT WITH SHELTER
COVE RESORT IMPROVEMENT DISTRICT NO. 1

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BE IT RESOLVED, that the Lodi City Council hereby authorizes the Electric Utility Director to approve the Service Schedule No. One to Member Resource Marketing Project Agreement relating to the identified Power Sale to Shelter Cove Resort Improvement District No. 1.

Dated: July 17, 1996

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I hereby certify that Resolution No. 96-100 was passed and adopted by the Lodi City Council in a regular meeting held July 17, 1996 by the following vote:

AYES: Council Members - Davenport, Mann, Pennino, Sieglock
and Warner (Mayor)

NOES: Council Members - None

ABSENT: Council Members - None

ABSTAIN: Council Members - None


JENNIFER M. PERRIN
City Clerk